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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

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1   RECORD OF ORAL HEARING
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3   UNITED STATES PATENT AND TRADEMARK OFFICE
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6   BEFORE THE BOARD OF PATENT APPEALS
7   AND INTERFERENCES
8   _____
9
10   Ex parte RICCARDO CESARINI
11   and GIANFRANCO COLOMBO
12   _____
13
14   Appeal 2008-5792
15   Application 10/679,357
16   Technology Center 1700
17   _____
18
19   Oral Hearing Held: January 13, 2009
20   _____
21
22
23   Before TERRY J. OWENS, MARK NAGUMO, and
24   KAREN M. HASTINGS, Administrative Patent Judges
25
26   ON BEHALF OF THE APPELLANT:
27   Christopher T. Kent, Esquire
28   FINNEGAN, HENDERSON, FARABOW,
29   GARRETT & DUNNER, LLP
30   901 New York Avenue, N.W.
31   Washington, D.C. 20001-4413
32
33
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1   MS. BOBO-ALLEN: Good morning. Calendar No. 10, Appeal

2 No. 2008-5792. Mr. Kent.

3   MR. KENT: Thank you.

4   MS. BOBO-ALLEN: Um-hum.

5   MR. KENT: Good morning.

6   JUDGE HASTINGS: Good morning.

7   MR. KENT: We're ready to proceed. My name is Christopher Kent.

8 I'm here on behalf of the appellant Ricardo Cesarini and Gianfranco

9 Colombo.

10   I wanted to start this morning by providing just a little bit of

11 background about the technology just to provide some perspective about the

12 rejections, and then following that I'd like to show how the appellants'

13 claims are distinguishable from the references. The application at issue here

14 relates to tires for high-performance vehicles and, in particular, to the tread

15 design for those tires. With respect to tire technology, performance is based

16 on the tread pattern as a whole rather than particular pieces of the pattern,

17 and I think that fits well with the law on obviousness which requires looking

18 at the references as a whole and the, and the claims as a whole rather than

19 picking and choosing parts of the claims and the references of putting them

20 together.

21   Performance tradeoffs with tire technology are many, and as such, the

22 designs are, are tradeoffs as well. For example, the perfect dry weather

23 high-performance tire would be a slick tire, would have no treads, whereas

24 for wet grip a tire would have very deep and, and many grooves to help

25 channel the water from under the tire. Another issue with tire technology is

26 noise. Blocks create noise as they roll across the ground. Another issue is

1   stability, something that some people refer to as tread squirm. Tread squirm

2   relates to the fact that blocks, as they travel across the ground between the

3   vehicle and the road, have a sort of flexibility. Now that flexibility provides

4   a lack of confidence when you're driving in a high-performance situation.

5   And in particular with this case, wear, wear is a very big issue with, with

6   tires, and when I say wear I say -- mean thermal as well as physical

7   degradation. As the, as the tread wears down, the blocks actually change

8   shape slightly due to the fact that the blocks do not extend from the tread or

9   the tire carcass in necessarily a perpendicular manner, and also there's a

10   thermal degradation that takes place with respect to the, to the material, the

11   elastomer material. Heating up and cooling down and heating up and

12   cooling down, the elastomer material may change properties.

13   So with, with respect to this particular application, we're looking at

14   trying to reduce thermal stresses during tire operation and compression and

15   sheer stresses. As seen in the test results at the back of the appellant's

16   application, the novel and nonobvious tread design claimed here has

17   provided surprising improvements relating to existing tread designs.

18   Let me quickly discuss the claims at issue. I'm going to be referring to

19   independent claims. There are six of them, 39, 58, 111, 130, 135 and 154.

20   Now three of these independent claims are directed to a tire for a vehicle.

21   Those claims are 39, 111 and 135. Three of the claims are directed to a set

22   of tires, and when I say a set, actually four tires are recited, two front tires

23   and two rear tires, and those are independent claims 58, 130 and 154. In the

24   claims reciting the, the set of tires, the front and rear tires actually have

25   different recited stressors.

1   If I might approach the bench, I have a figure here that I think might

2   be helpful for our discussion. This figure is figure 2 from the application

3   with some annotations to help follow along with respect to what we're

4   discussing here this morning.

5   JUDGE NAGUMO: Were these annotations before the Examiner?

6   MR. KENT: The annotations?

7   JUDGE NAGUMO: Yeah.

8   MR. KENT: No, but nothing here is new. All of this was disclosed

9   before in the application.

10   JUDGE NAGUMO: Okay, but -- and these annotations you've made

11   those comments to the Examiner in the record somewhere in the --

12   MR. KENT: Oh, yeah. I mean --

13   JUDGE NAGUMO: Okay.

14   MR. KENT: -- these are just claim terms relating to different aspects.

15   JUDGE NAGUMO: Thank you. If you have an extra copy, if you

16   could give it to the reporter.

17   MR. KENT: Can I give it to him afterwards?

18   JUDGE NAGUMO: Well, let me --

19   MR. KENT: Actually, I can give him this one.

20   JUDGE NAGUMO: If you're going --

21   MR. KENT: I can give him this one.

22   JUDGE NAGUMO: -- just be sure to use as, as many terms to make

23   it as concrete as possible.

24   MR. KENT: Okay.

25   JUDGE NAGUMO: For the record.

26   MR. KENT: Here, if you'd like to follow along, that's fine.

1   Thank you.

2   JUDGE NAGUMO: Thank you very much.

3   MR. KENT: Okay, let me just read you quickly some portions of

4 claim 39 to give you some relevant -- to recite some relevant claim

5 terminology here. Claim 39 you'll see is, is directed to a tire for a vehicle,

6 and getting down to the tread portion, wherein, let's see, 1, 2, 3, 4 -- on line

7 eight, wherein the tread comprises an equatorial zone E, two shoulder zones

8 F and G, wherein the equatorial zone extends on both sides of an equatorial

9 plane YY which is shown vertically for figure 2, wherein the two shoulder

10 zones are disposed in axially opposed positions with respect to the equatorial

11 zone, wherein the tread further comprises a plurality of transversal grooves

12 15. Now these are the diagonal grooves extending I guess left to right up

13 and left -- and right to left up depending on which set of grooves you're

14 looking at. Wherein each of the transversal grooves comprises an equatorial

15 groove portion, that's 17, in the equatorial zone E and a shoulder groove

16 portion 16 in one of the shoulder zone. Wherein -- let's see, skipping down

17 one here, wherein the shoulder groove portion of each transversal grooves

18 has at least a width's portion smaller than the equatorial groove portion, and

19 wherein the transversal grooves 15 are circumferentially distributed in

20 groups.

21   Now if you look at figure 2, a group would be, for example,

22 15A through 15E alternately extending from the axially opposed shoulder

23 zone. Wherein the groups of transversal grooves, that would be 15A

24 through 15E, define a plurality of substantially continuous tread portions 18

25 in the equatorial zone. Now those tread portions 18 are in between the

26 grooves there.

1   And then further, wherein each substantially continuous tread

2   portion ends at an equatorial groove portion of a same transversal groove of

3   an axially opposed group of transversal grooves. Now a same transversal

4   groove would be in this figure 2, for example, would be 15A. And then

5   wherein each of the transversal grooves ends at a predetermined distance D.

6   You can see a little D down there kind of in the middle. Okay, from the

7   equatorially groove portion of the longest transversal group 15A of the, the

8   longest being 15A of the axially opposed group of transversal grooves so

9   that all the transversal grooves end within the equatorial zone.

10   JUDGE NAGUMO: If I could interrupt for just a minute.

11   MR. KENT: Sure.

12   JUDGE NAGUMO: And let me know if you're going to come back

13   to this anyway, and you can put me off that way. The wherein each of the

14   transverse grooves ends at a predetermined distance. As shown, each one of

15   those distances is the same. Is -- what -- is that a requirement, or is that just

16   a particular instance? In other words, can each predetermined distance be

17   different as long as it's predetermined?

18   MR. KENT: No, that's --

19   JUDGE NAGUMO: And, and where is the support for that? And if

20   you're going to come back to that, just tell me that.

21   MR. KENT: I will come back to that.

22   JUDGE NAGUMO: Okay.

23   MR. KENT: But the answer to that is yes, they are the same distance.

24   JUDGE NAGUMO: Okay, thank you.

25   MR. KENT: And, and I can -- I'll refer to the support when I get to it.

1   So that's a representative reading of the independent claims. Now the

2 independent claims also have aspects that distinguish themselves from one

3 another, but that's just to give you kind of a basis for what we're talking

4 about when we talk about transversal grooves and substantially continuous

5 tread portions.

6   Okay, moving on to the rejections, there's basically three rejections of

7 the independent claims. There's one I'll refer to as the Japan 408 rejection

8 which is a 103 rejection based on the collection of the following references.

9 Japanese patent application no. 4-154408, Great Britain patent no.

10 2,224,472, which I'll call Great Britain 472, Japanese patent publication no.

11 6,247,109, which I'll refer to as Japan 109, alleged admitted prior art, and

12 U.S. patent no. 2,104,532 to Sommer, which I'll refer to as Sommer. That's

13 one claim rejection and that applies -- has been made against all of the

14 independent claims. All of the independent claims have been rejected

15 further under what I'll refer to as the Sommer rejection which is a 103

16 rejection based on the following collection of references, Sommer, Great

17 Britain 472, admitted prior art, and optionally at least one of U.S. patent no.

18 1,996,418 to Hargraves in Japan 109. And then finally, there is a third

19 rejection of -- that applies to independent claim 135 only, and I'll refer to

20 that as the Hoover rejection, and that's 103 based on U.S. patent

21 no. 2,011,552 to Hoover and U.S. patent no. 4,446,902 to Madec.

22   Concerning the Japan 408 rejection, all of the independent claims

23 recite the following recitations, and Japan 408 lacks this subject matter. It

24 recites the following recitations. Wherein such -- wherein each substantially

25 continuous tread portion ends at an equatorial groove portion of a same

26 transversal groove of an axially opposed group of transversal grooves, and

1   wherein each of the transversal grooves ends at a predetermined distance

2   from the equatorial groove portion of a longest transversal groove of the

3   axially opposed group of transversal grooves so that all of the transversal

4   grooves end within the equatorial zone.

5   With respect primarily to independent claims 39 and 58 which also

6   recite wherein the longest transversal groove of the axially opposed group of

7   transversal grooves extends from one of said axially opposed shoulder zones

8   and terminates at a location between the equatorial plane, that was YY, and

9   the sidewall opposite the said one opposed shoulder zone. So it extends

10   from one shoulder zone across the equatorial plane into a position between

11   the opposite sidewall, so it has to extend all the way across. Independent

12   claims 38 and 39 recite that. The Examiner contends that figure 2 of Japan

13   408 discloses that the longest transverse group extends across the equatorial

14   plane. Japan 408 has continuous grooves running from the central portion to

15   both shoulder portions, and therefore they terminate in the shoulder portions,

16   not at a location prior to the shoulder zone.

17   JUDGE NAGUMO: What defines the shoulder zone at the shoulder

18   portion?

19   MR. KENT: The shoulder, the shoulder itself I believe is, is shown in

20   figure, figure 1, and at 4 on one side and 5 on the other side.

21   JUDGE NAGUMO: Yeah, but, but what defines it? I mean I --

22   MR. KENT: The shoulder zone?

23   JUDGE NAGUMO: I could call (indiscernible) in the shoulder. I

24   could call just the, the very edge of the tire a shoulder and --

25   MR. KENT: Or I --

1   JUDGE NAGUMO: -- what's to prevent me from being extremely --

2 where does this specification define the shoulder?

3   MR. KENT: Okay, well, the specification defines a shoulder, let's

4 see, at page 16, line 21, it says the tire 1 comprises a carcass structure 2,

5 improving a central ground portion and two sidewalls 4, 5, provided with

6 reinforcing ply. Okay.

7   And then turning to page 17, let me -- just a second. At 19, in

8 transversal grooves, on line 19 of page -- yeah, of line 19 of page 17, the

9 transversal grooves are circumferentially distributed according to pitch P and

10 grooves alternately extending from opposite shoulder zones F and G of the

11 tread 14 and distributed according to the pitch P along the circumferential

12 development of said tread. And that -- if you refer to figure 2, it will show

13 where the shoulder zones E -- or I'm sorry, F and G lie.

14   If you look at the claim, the claim also says wherein a carcass

15 structure comprises a central crown portion and two sidewalls, and then

16 wherein a tread comprising an equatorial zone and two shoulder zones

17 wherein the equatorial zone extends between the -- extends on both sides of

18 an equatorial plane of the tire YY. Wherein the two shoulder zones are

19 disposed in actually opposed positions with respect to the equatorial zone.

20 And that's, that's how the, the shoulder zones are defined in the claims and in

21 the spec.

22   JUDGE NAGUMO: So it's anything -- I can choose a point

23 somewhere to either side of the equatorial line, which seems to be well

24 defined, and call anything outside of that the shoulder zone?

25   MR. KENT: Well, the -- yeah, I think it's reasonable to extend the

26 shoulder zone from some point beyond the, you know, on either side of the

1   equatorial plane, if you will, and then some distance, because there is an

2   equatorial zone that's --

3   JUDGE NAGUMO: So as long as I give the equatorial zone some

4   width --

5   MR. KENT: Right, it has to have some --

6   JUDGE NAGUMO: -- I can call anything outside of that over to the

7   edge of the tire the shoulder zone?

8   MR. KENT: I believe so. I'd have to -- I mean I would have to --

9   JUDGE NAGUMO: Okay, thank you.

10   MR. KENT: -- look deep into it, but I'm not -- I don't know -- the

11   equatorial zone may be defined more specifically to be, you know, a portion

12   of the contact patch or something. But I don't, I don't know offhand.

13   JUDGE NAGUMO: Just -- I'm trying to pursue this a little bit,

14   because we're talking about transversal grooves and equatorial grooves.

15   MR. KENT: Right.

16   JUDGE NAGUMO: And transversal grooves I think have to cross

17   from the shoulder into the equatorial zone. Is that correct? So where that

18   zone boundary is defines to some -- well, it seems to define whether

19   something is a transversal groove or not?

20   MR. KENT: Right.

21   JUDGE NAGUMO: And so that --

22   MR. KENT: Well, well, the --

23   JUDGE NAGUMO: -- could be important --

24   MR. KENT: -- transversal groove is actually the whole groove if I

25   may. I'm sorry I cut you off.

26   JUDGE NAGUMO: Okay. No, go ahead, please.

1   MR. KENT: The transversal groove extends all the way from the

2 sidewall across into the equatorial zone. There are two portions of the

3 transversal groove. One portion is the shoulder portion, and one portion is

4 the equatorial portion. As shown there in figure 2, the shoulder portion I

5 believe is referred to as 16, and the equatorial portion is 17. So consistent

6 with the disclosure, yes, there is a region in the center portion of the tire

7 that's an equatorial zone, and there are regions on either side of that that are

8 shoulder zones, and then there's the shoulder, the sidewall itself.

9   JUDGE NAGUMO: Is there any deficiency in JP-408 other than the

10 transversal grooves not ending within the equatorial zone?

11   MR. KENT: Well, the -- that is a primary difference between the

12 claims and, and the -- and JP-408. Looking at JP-408, if you look at, for

13 example, figure, figure 2, figure 2 has, has the zigzag pattern that

14 continuously runs circumferentially around the tire. Now the Examiner has

15 taken the position that based on the Great Britain patent, it would be obvious

16 to remove that groove which is contrary to what Japan 408 says. Japan 408

17 has that zigzag groove that runs circumferentially around the tire to prevent

18 wandering on grooved pavement. I don't know -- you don't see it that much

19 anymore, but grooved pavement was big I think in the '70s or '80s. I don't

20 know if I'm dating myself, but it was always really odd driving on it,

21 because it made a strange noise, and the car always felt like it was

22 shimmying. And so when he refers to trying to get rid of tread wander,

23 that's what I believe he's referring to in Japan 408.

24   Now Great Britain 472 actually has a portion running down the

25 middle of the tire. Let me just turn to Great Britain 472. Great Britain 472

26 is primarily concerned with wet weather traction, and so we have these

1   diagonal grooves in the tire, and one of the things he teaches is getting rid of

2   circumferential grooves that extend all the way around the tire. Now what

3   he, what he has here is he has tread that, that on the center line is continuous.

4   So he -- in a sense he has a continuous tread rib running around the center

5   line of his tire. Unfortunately, such a continuous tread rib would be

6   inherently problematic with respect to wander.

7   So the two references are somewhat inconsistent in, in their teachings

8   in terms of trying to combine them with one another. For example, if you

9   looked at, at Japan 408, and you looked at Great Britain 472, I think if you

10   looked at them as a whole, you certainly wouldn't come away with let's

11   remove the zigzag groove that Japan 408 specifically teaches as being

12   important to prevent tread wandering.

13   JUDGE NAGUMO: I, I -- maybe you can correct me. I thought that

14   the point of 408 here was to cut off the grooves. I think they're labeled 4 in

15   the figure from the groove 7. On, on my picture here, I've covered the

16   grooves, what I've called 7 --

17   MR. KENT: Okay.

18   JUDGE NAGUMO: -- in green and the orange over here, and if you

19   just chop off the -- break the connection between 4 and 7, then you would

20   achieve the continuous islands 18, and so I'm not quite sure how to relate

21   that to your statement that the Examiner wants to remove the groove, if you

22   could clarify me on that.

23   MR. KENT: Well, to the extent -- I, I think I understand what you're

24   getting at. Japan 408 has the, the -- I guess the blocks 5 set up in such a way

25   that the rolling noise will be reduced. You won't have a consistent harmonic

26   set up, and the way he does that is by purportedly -- purportedly the way he

1   does that is by having these blocks spaced, like he, he defines these blocks,

2   but he has the spacing in such a way that he won't create a harmonic

3   between the different blocks as the, as the tire rolls around. I can't say that

4   I'm an expert in, in how that works, but he wants an inconsistent distance.

5   He doesn't want them all the way the same. So he's got what he calls -- I

6   think he calls them V-shaped or lambda shaped things, but essentially there

7   are three different sizes inherently set up in that pattern. But what's

8   important is in order for that pattern to be set up at all, he needs that groove

9   that zigzags down the middle of the tire. And the Examiner is trying to take

10   that groove away based on 472. That's the, that's the way we understand his

11   rejection, and we feel it's inconsistent with Japan 408. And since it's

12   inconsistent, if you took the references as a whole, certainly you wouldn't

13   come away with the claim that we have, not without improper hindsight.

14   Let me quickly address the predetermined distance aspect that you

15   brought up. I think the Examiner has taken a position with respect to that

16   limitation that's inconsistent with the disclosure as a whole. If you look at

17   how we described, how we described this aspect in the application. Let me

18   just quickly get to that portion. There's a couple different places in the

19   application that we refer to that. For example, on page 8, line -- beginning at

20   line 8, it says preferably the equatorial portions of the transversal grooves, as

21   would be 15 now, terminate at a prefixed distance from the equatorial plane

22   of the same transversal groove. Still more preferably the transversal groove

23   having a prevailing length of axially opposed group of grooves. Preferably

24   such distances -- such distance, one distance, is comprised between 0

25   millimeters and 50 percent of the mean fit of the tread pattern, and still more

26   preferably it is at least equal to 4 millimeters.

1   Now if you look at figure 2, figure 2 we have actually identified that

2   distance as D. Referring to page 17 at line 25, starting there, it says the

3   transversal grooves 15A, 15B, having a greater length, extend on either side

4   of equatorial plane YY of the tire, while all of the grooves, 15A through

5   15D, of each group terminate at a prefixed distance D from the equatorial

6   portion of the transversal groove 15A, having a prevailing length of axially

7   opposite group of grooves.

8   Now the Examiner in his, his position has been that a predetermined

9   distance seems to be a plurality of different distances related to each of the

10   different length grooves. Now that reading is, we believe, contrary to the

11   natural reading of the claim limitation, and further it's, it's a characterization

12   of the limitation that's inconsistent with the specification. For example,

13   looking at the -- how it's recited in the claim, it says wherein, wherein each

14   of the transversal grooves ends at a predetermined distance from the

15   equatorial groove portion of a longest transversal groove of the axially

16   opposed group of transversal grooves so that all of the axially transversal

17   grooves end within the equatorial plane.

18   Now to take his position, it would be more natural to have recited it as

19   to say wherein the, the transversal grooves end at predetermined distances

20   from the equatorial groove portion of the longest transversal groove, and that

21   combined with how we've described it in the specification I believe it, it

22   shows that it really means that all of those end at the same predetermined

23   distance.

24   JUDGE NAGUMO: What would you say to an argument that's

25   made -- say this is a patent, so now you're suing somebody for infringement,

26   and they say well, they gave very precise language in the specification that

14

1 we agree means that each transversal groove has to end at a particular

2 distance, and that's certainly within the scope of their claims, but their claim

3 language is broader than that. It's somewhat ambiguous, and you have to

4 import this clear language. If they wanted the clear language in the claim,

5 why didn't they use the clear language in the claim, so reading the claim

6 broadly and not inconsistently with the spec, it certainly encompasses the

7 one distance, but it also encompasses these other distances which is in the

8 prior art which therefore, you know, we'd -- whether or not we infringe, the,

9 the claim is no good as against prior art.

10   If you wanted that precise language, how would argue that you're not

11 reading limitations from the spec into the claim to get it?

12   MR. KENT: Well, well, I think the way you would respond to that is

13 you would say look, the, the way you define the claim term, the way you

14 construe the term is not in a vacuum. You construe the term by looking at

15 the, the specification and the claims in their entirety and understanding what

16 one of ordinary skill in the art would bring from that, and one aspect of that

17 is you would not interpret the claim term or limitation, if you will, in a way

18 that is inconsistent with the way it's described in the spec.

19   JUDGE NAGUMO: It's not inconsistent. It's just broader. That's the

20 argument I'm proposing to you. It includes the case where they're all -- all

21 terminate the same distance, each one of these transversal grooves. But it

22 also includes a distance where each one is determined -- ends at a different, a

23 different distance from its neighbor say.

24   MR. KENT: Right.

25   JUDGE NAGUMO: But that distance is predetermined. I mean it

26 doesn't change from similar area to similar area on the tread.

1   MR. KENT: Right.

2   JUDGE NAGUMO: So we've got a --

3   MR. KENT: I would --

4   JUDGE NAGUMO: -- broad claim. We're supposed to read it

5 broadly. Why must we be --

6   MR. KENT: Well, I would, I would say that well, it's ambiguous, and

7 to the extent that it's ambiguous that -- the, the federal circuit is that you look

8 to the disclosure and say okay, what is reasonable from the disclosure?

9 What's enabled from the disclosure? For example, the Nistrom and Trex

10 (phonetic sp.) case.

11   JUDGE NAGUMO: But, but they're all enabled here. I don't think --

12   MR. KENT: Right.

13   JUDGE NAGUMO: -- there's an enablement problem.

14   MR. KENT: Right.

15   JUDGE NAGUMO: To make these different lengths. So if it is

16 ambiguous, why shouldn't we hold you to the broad reading, the broadest

17 reasonable reading, and we'll give you the uniform distance as a special case.

18 Why should we make that the sole case of the claim?

19   MR. KENT: Well, I, I don't think that's the broadest reasonable

20 reading though. If you read the claim term naturally, it says a predetermined

21 distance. Each transversal groove, a predetermined distance from that same

22 longest transversal groove. So --

23   JUDGE NAGUMO: Okay, I, I have your position. Thank you.

24   MR. KENT: Okay.

25   JUDGE NAGUMO: We needn't beat the horse.

26   MR. KENT: All right.

1   JUDGE NAGUMO: Further.

2   MR. KENT: I'm not sure how much time I have left at this point.

3   JUDGE OWENS: You're over your 20 minutes. But you -- maybe

4 you can proceed to the other rejections quickly.

5   MR. KENT: Okay. Looking to the, the Sommer rejection, the

6 Examiner has, has rejected the claims based on Sommer. Now one of the,

7 one of the -- there are several, there are several problems that we have with

8 the Sommer reference. Number one, the Sommer reference with respect to

9 claims 39 and 58, the transverse -- what the Examiner has identified

10 transverse grooves in Sommer, shown in figure 8 and figure 8A, those do not

11 extend from one, do not extend from one of said axially opposed shoulder

12 zones and terminate at a location between the equatorial and the sidewall of

13 said one of the axially opposed shoulder zones.

14   Now the Examiner had said well, the, the grooves extend to the

15 equatorial plane or to the center plane, but that's not what the claim requires.

16 The claim requires extending beyond the center plane so in that --

17   JUDGE HASTINGS: Well, I think -- can I stop you here? The --

18   MR. KENT: Sure.

19   JUDGE HASTINGS: -- Examiner's position was relying on

20 column -- page 3, the first column of Sommer, which says that the grooves

21 are of different length and such a manner that in the center plane there is a

22 zigzag stripe.

23   MR. KENT: Right.

24   JUDGE HASTINGS: And he's saying with -- in line with the center

25 plane of the tire, and he's saying in order to make a zigzag stripe at the

1   center plane, necessarily the longest grooves must cross the equatorial plane.

2   That is his position.

3   MR. KENT: Right.

4   JUDGE HASTINGS: And you, you don't think that's reasonable?

5   MR. KENT: No, I don't. I mean there is no reason that the, the

6   groove has to extend beyond the center in order for it to be zigzagged. I

7   mean essentially what he, he has is, if you will, let's see, I don't have

8   anything to write it with. But I mean you can have a zigzag without ever

9   crossing the center line. For example like that, so I don't -- I'm not

10 necessarily -- I, I don't buy into that, because it's not necessarily the case that

11 the grooves would have to extend across and onto the other side in order to

12 have the zigzag at the center.

13   JUDGE NAGUMO: From the drawing, it looks roughly like the

14 grooves do cross that, and I think you had some sort of a not to scale kind of

15 argument, but how does not to scale comport with what appears to be, I have

16 to get a ruler out along with that, but they appear to cross the center line.

17 Drawing is good for all it teaches one of skill in the art, so yeah, they don't

18 need to cross the center line perhaps. They certainly don't to get a zigzag,

19 but if you have something that does cross the center line, it teaches that you

20 certainly could cross it, and so why isn't that a reasonable teaching to take?

21   MR. KENT: Well, I think if you look at the, at the express language

22 in the specification that refers to those and how, how they relate to the center

23 line, it says extends to the center line. So the express language in Sommer

24 doesn't support an interpretation of extending across the center line.

25   JUDGE NAGUMO: Okay, thank you.

1   MR. KENT: There are similar arguments with respect to this, just to

2 try to move things along, there are similar arguments with respect to

3 Sommer relating to the other independent claims. One of them is Sommer

4 teaches narrow slits that flex such that as a slit flexes, the edge will cut into

5 mud to provide better traction. That's inconsistent with the claim recitations

6 and the other independent claims that recite performing a stiff matrix for

7 dispensing with the stresses and, you know, as, as the tire rolls along.

8   JUDGE NAGUMO: Do you have a definition in the spec for stiff

9 matrix?

10   MR. KENT: Let's see.

11   JUDGE HASTINGS: I think the term in the claim is structurally stiff

12 grid.

13   MR. KENT: Structurally stiff grid.

14   JUDGE HASTINGS: Is what's in claim 111.

15   MR. KENT: Right, and the Examiner has taken a position that that's a

16 relative term, but it's inconsistent with the teaching of the Sommer reference

17 which teaches a specific flexibility in order to achieve what he's trying to do.

18   JUDGE NAGUMO: Well, if it's relative I -- where's the definition of

19 structurally stiff grid or an equivalent term that would let us say it may be

20 relative, Examiner, but they've defined it this way? So -- and you haven't

21 taken that into account.

22   MR. KENT: Right.

23   JUDGE NAGUMO: Otherwise anything -- everything has a certain

24 degree of flexibility, so in some sense the Examiner's position has merit

25 unless your spec defines against it.

1   MR. KENT: Okay. I don't believe we have defined it in the sense of

2   stiff as in pound per feet, but our position still is that's contrary to what we're

3   trying to do here. There are also other reasons why Sommer doesn't meet

4   the limitations, and those deal with the -- how the transversal grooves are

5   related to transversal grooves of the opposite transversal grooves. For

6   example, in the claim limitations, wherein, wherein a substantially continued

7   tread portion -- let's see, where an insubstantially continuous tread portion

8   ends in an equatorial groove portion of the same transversal groove, that's

9   just not shown in Sommer, and wherein each of the transversal grooves ends

10   at a predetermined distance from the equatorial groove portion of the longest

11   transversal groove, we already talked about the predetermined distance, in

12   the transversal groove so that all of the transversal grooves end within

13   equatorial zone. I don't believe those are shown either.

14   The last, the last rejection is the Hoover rejection. The Examiner, the

15   Examiner is -- we believe the Examiner has taken a broad, an unduly broad

16   and improper interpretation of claim 135. Claim 135 recites in part wherein

17   the groups of transversal grooves defined the -- wherein the groups of

18   transversal grooves define a plurality of substantially continuous tread

19   portions in the equatorial zone. Wherein each substantially continuous tread

20   portion ends at an equatorial groove portion of a same transversal groove of

21   an axially opposed group of transversal grooves.

22   Now the Examiner has looked at Hoover, and he has identified

23   the portions in such a way that's inconsistent with that last set of limitations I

24   read. Now he's, he's -- I guess if you -- I don't know if you have the reply

25   right in front of you, but the -- based on, on Hoover, Hoover actually shows

26   a tread portion that does not terminate at the longest transversal groove from

1   the other set. For example, if you look at Hoover figure 1 on the -- coming

2   down the right side I guess of the, of the tread if you will, and where you can

3   see complete tread portions, I guess the first one would be 11, the second

4   one down would be 11A, and then the next one would be 11. The 11 doesn't

5   stop, if you will, it doesn't terminate at the same groove as the 11 and 11A

6   transfers rib portions -- or tread portions actually. So our, our feeling is that

7   Hoover doesn't disclose that. The Examiner has identified his group in a

8   different way such that he only includes 11 and 11A I believe.

9   JUDGE HASTINGS: Right, and why is that unreasonable? The

10   claim recites comprising, and then it recites, you know, the Examiner's

11   position is that it recites that the group of grooves define a plurality of tread

12   portions. A plurality I'm sure you agree is two or more. So he's randomly

13   defining, if you want to say that, a plurality as two tread portions.

14   MR. KENT: Right.

15   JUDGE HASTINGS: And each of those two tread portions does end

16   at an equatorial groove portion as he outlined in his answer with markings.

17   And your objection to that is that's I guess a random group.

18   MR. KENT: Yeah --

19   JUDGE HASTINGS: What, what in your claim prevents that?

20   MR. KENT: Well, if you look at the claim, and you interpret in light

21   of the disclosure, wherein each substantially continuous tread portion -- let's

22   see. Let me start one ahead of that, one limitation --

23   JUDGE HASTINGS: Okay.

24   MR. KENT: -- before that. Wherein the groups of transversal

25   grooves define a plurality of substantially continuous tread portions, so that

1   would be a group of transversal grooves, if you will, in figure 1, I guess

2   would be 13 and 13, that would be a group.

3   JUDGE HASTINGS: Right.

4   MR. KENT: And they define a plurality of continuous tread portions.

5   So they, they define -- really they only -- the two -- those two grooves really

6   only truly define 11A. So even though they're only defining one tread

7   portion, or if you take an alternative view I guess, and you say well, the

8   grooves 13 define perhaps three tread portions, because if you look at 13 it

9   defines I guess one edge of 11, and then the lower 13 is defined or defines --

10 the upper 13 and the lower 13 define 11A, that second one, and then the

11 lower 13 also defines the tread portion 11 that actually extends almost all the

12 way across the tread.

13   So I think there's two alternatives. I mean either -- he only defines a

14 single tread portion, the 11A, or it defines three tread portions, and if it

15 defines three tread portions, one of those tread portions extends beyond the

16 groove, so it doesn't meet the limitation.

17   JUDGE OWENS: Our time is up.

18   MR. KENT: Okay. Well, thank you very much. I'd just like to say I

19 think if you take the references as a whole, you can't come to the conclusion

20 that, that the claims as a whole are obvious, and we appreciate your

21 consideration. Thank you.

22   Whereupon, the hearing concluded on January 13, 2009.

23